

Expert Report of Paul C. Sarahan in the matter of:

*Harris County v. International Paper Company, et al.*, Harris County District Court Case No. 2011-76724;

*Dao Van Pho, et al. v. International Paper Company, et al.*, Harris County District Court Case No. 2012-39857); and

*Jim Harpster, et al. v. International Paper Company, et al.*, Harris County District Court Case No. 2012-66308.

Prepared for

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Prepared by

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August 15, 2013

**Section 1. Summary of qualifications.**

I have been practicing environmental law for over 19 years. During that period, my work has been most specifically focused on the enforcement of state and federal environmental laws and regulations. I am employed by Fulbright & Jaworski LLP, and I work in the Firm's Austin, Texas office. My practice is focused on advising clients on environmental and workplace safety issues related to enforcement, permitting, auditing, business transactions, and litigation. Much of my work is regulatory in nature, involving matters before or involving the Texas Commission on Environmental Quality, the Environmental Protection Agency and other state and federal agencies.

I attended the University of Virginia in Charlottesville, Virginia from 1983-1985. Due to my father's illness and subsequent death, I transferred to the University of Texas at Austin, where I majored in Finance and received my Bachelor's degree in Business Administration in 1987. I then attended the University of Texas School of Law, in Austin, Texas, where I received my Juris Doctor degree, with High Honors, in 1990.

Following law school, I practiced commercial and employment litigation in Houston as an associate for Sullivan, King, Henri & Sadberry. While practicing law, I entered the LL.M.

program at the University of Houston Law Center, focusing on Energy, Environmental, and Natural Resources Law. The focus of my studies was in the area of environmental law. I completed the first half of the program by taking classes at night. In February 2003, I left Sullivan, King, Henri & Sadberry to pursue completion of the LL.M. program on a full-time basis. I received my LL.M. in December 1993.

I worked on a contract basis on various litigation projects in Houston from February 1993 to July 1994. In July 1994, I accepted an Attorney IV staff attorney position in the Enforcement Policy Division of the Texas Natural Resource Conservation Commission. The Enforcement Policy Division was responsible for developing the agency's enforcement policies and for litigating the agency's most complex enforcement cases.

While in the Enforcement Policy Division, I served on a team that developed the agency's procedural rules for contested enforcement cases. These rules are now found in chapter 80 of the agency's rules and apply to all of the agency's contested case hearings and other hearings held by the State Office of Administrative Hearings ("SOAH").

During this time, I also served on a team that developed the agency's enforcement rules governing, among other things, the agency's enforcement guidelines, remedies, and its institution of civil enforcement. The rules also include provisions regarding mandatory enforcement hearings and the referral of enforcement matters to SOAH. These rules are now found in chapter 80 of the agency's rules.

In addition to rulemaking projects, I handled a series of enforcement cases. One of these was a case against Pilgrim Pride, which represented one of the first enforcement cases brought by the agency alleging air, water and waste violations.

In November 1994, the Enforcement Policy Division was reorganized and combined with a portion of the agency's Legal Division to form the Litigation Support Division, which is now known as the Litigation Division. The first step for the new division was to eliminate a substantial backlog of enforcement cases. Through the efforts of the Field Operations Division, the Enforcement Division and what is now the Litigation Division, this backlog was eliminated in 18 months. As part of this effort, I supervised a group of three-entry level attorneys who took backlogged enforcement cases and brought them to conclusion.

In July 1995, the agency reorganized its organizational structure from one that was media-based (i.e., air, water, waste) to one that was function-based (i.e., permitting, enforcement, policy). Following this reorganization, the agency initiated a series of projects to create uniform enforcement policies. I participated in efforts to create a uniform penalty policy; a uniform enforcement database to track inspections, enforcement actions, orders and compliance; and "Criteria for Initiation of Formal Enforcement Action for Air, Water and Waste Violations," which described the process by which the agency decided how to respond to violations, i.e., whether to allow the matter to be resolved with immediate corrective action, to issue a Notice of Violation, or to initiate a formal enforcement action that would result in an enforcement order. This document is now known as the Enforcement Initiation Criteria. Until November 2005, I participated in each revision of this document.

In 1996, I was promoted to Senior Attorney. In that role, I supervised one-half of the division's attorneys, and handled complex enforcement cases, including the case brought against the City of San Antonio and VIA Metropolitan Transit Authority for wastes illegally disposed of across San Antonio in connection with the construction of the Alamodome. I also was co-counsel on the first involuntary revocation of a hazardous waste permit against Malone Services Corporation ("MSC"). As part of the MSC matter, I was involved in negotiations with various proposed purchasers of the MSC facility in an unsuccessful effort by MSC to avoid having the site designated as a Superfund site.

In April 1998, I was named Acting Director of the Litigation Division. In this role, I was responsible for all of the activities of the division, which included administrative and civil enforcement, criminal investigations, and operation of the environmental audit and supplemental environmental projects ("SEPs") programs. I continued, throughout my time at the agency, to handle a number of the agency's most complex enforcement cases, resulting in many of the largest enforcement orders in the agency's history. In August 1998, I was named Director of the Litigation Division. I served in that capacity from August 1, 1998 to November 18, 2005.

As Director, I worked to expand the use of the SEP program by identifying third parties, including non-profit organizations, cities and counties across the state, that could act as recipients of SEP funds generated from enforcement actions. These funds were used by these entities to perform environmental projects in the communities where violations occurred, rather than sending those funds to the State's General Revenue Fund.

In addition to the activities discussed above, I served as an agency resource on legislative matters and inquiries related to enforcement matters. During the legislative sessions from 1999-2005, I testified in various legislative hearings and meeting on enforcement issues and policies.

In 2001, the agency went through a Sunset Review process, a periodic review by the Sunset Commission and the Legislature related to the agency's performance, functions, and its continued need to exist. As part of this process, I participated in the development of an agency self-evaluation report, which addressed the agency's key functions, powers and duties; and its history, policymaking structure, funding, organization, and programs. The report also identified policy issues that should be considered by the Legislature. During the Sunset Review process and the subsequent legislative session in 2001, I served as a key resource to the agency's Executive Director and to the Legislature on various enforcement-related issues, including the Legislature's mandate that the agency, renamed as the Texas Commission on Environmental Quality ("TCEQ"), create compliance history standards, including a ratings and classification system.

Following the legislative session in 2001, I participated on the team that developed the compliance history rules that implemented the Legislature's directive. These rules are found in chapter 60 of the agency's rules.

In 2001 and 2002, I participated in TCEQ's emission event rulemaking to implement legislation addressing this topic. In addition to the rulemaking, I worked with the Enforcement and Field

Operations Division to develop inspection and enforcement procedures to address emission events. I worked on emission event issues for the agency from 2001 through November 2005.

In 2003, as a result of some reorganization with the TCEQ's Office of Legal Services, the legal staff supporting TCEQ's Remediation and Waste Registration and Evaluation Divisions was transferred to the Litigation Division. As a result of this change, I became responsible for the supervision of the attorneys that addressed matters involving TCEQ's Superfund, Voluntary Cleanup, Corrective Action, Dry Cleaner, and Petroleum Storage Tank Cleanup and Reimbursement, and Natural Resource Damages programs. In addition to supervising these attorneys, I was actively involved in discussions with the agency's upper management regarding these programs, as warranted.

In 2003, the State Auditor's Office ("SAO") conducted an audit of the agency's enforcement and permitting functions. I served as a resource to the SAO in this process on behalf of the TCEQ. The audit found that the agency did not consistently issue enforcement orders or settle enforcement cases within its required timeframes, classify SEPs according to established criteria or monitor SEPs administered by third parties; and calculate penalties accurately or fully collect delinquent penalties. The SAO stated, "If unaddressed, these inconsistencies could limit the Commission's ability to collect penalties on a timely basis, hold environmental violators accountable, and deter future instances of noncompliance."

On December 5, 2003, the TCEQ's Executive Director initiated a comprehensive review of its enforcement functions called the Enforcement Process Review to ensure that the agency was enforcing environmental laws fairly, effectively, and swiftly. I participated in several areas of the review and attorneys and other personnel from my division also participated with my supervision. The review's objectives were to sharpen the agency's focus on preventing and reducing risk to human health and the environment; make the enforcement program stronger by making the process faster and more predictable; simplify and clarify the process; identify resource and training needs; and improve public access to enforcement information and the enforcement process.

In January 2005, the TCEQ issued its final report on the Enforcement Process Review, which included specific recommendations for consideration by the Executive Director and Commissioners. Among the recommendations was the streamlining of the enforcement process. I participated in several Commission work sessions in which the recommendations were discussed and considered by the TCEQ's Commissioners. As recommendations were approved, I worked, as appropriate, on their implementation.

In October 2005, I received an offer to join Fulbright & Jaworski L.L.P.'s environmental practice. I concluded my service to TCEQ on November 18, 2005.

Since leaving TCEQ, I have handled several enforcement matters before the TCEQ and EPA. These enforcement matters have included air, waste, and water issues. A significant number of the air-related enforcement matters have involved emission events. I have participated in a number of environmental audits conducted through TCEQ's environmental audit program, and have incorporated a number of SEPs into agreed enforcement orders entered into with TCEQ. I

have reviewed and monitored revisions to TCEQ's Enforcement Initiation Criteria, Penalty Policy and Compliance History rule.

## Section 2. *Opinions offered.*

The opinions presented in this expert report are based on information reviewed to date. I reserve the right to supplement and modify this report if additional information becomes available to me or if I am asked to address additional issues. In addition, I respectfully reserve the right to supplement my opinions in light of any new information that becomes available through the ongoing discovery process, as well as information that may become available from other sources.

### Section 2.1

I have been asked to provide an opinion as to whether Harris County's pending suit against International Paper Company ("International Paper"), Waste Management Inc. ("WMI"), Waste Management of Texas Inc. ("WMOT"), and McGinnes Industrial Maintenance Corporation ("MIMC") is one that is instituted in the same manner as the TCEQ. In preparation for providing this opinion, I reviewed the following materials: relevant pleadings of the plaintiff and the defendants in this matter; relevant provisions of the Texas Water Code, relevant provisions of the TCEQ's rules found in title 30 of the Texas Administrative Code, TCEQ's Enforcement Initiation Criteria, TCEQ's Sunset Self-Evaluation Reports for 1999 and 2009, TCEQ's annual enforcement reports, federal Superfund documents related to the site, and congressional testimony of the County Attorney for Harris County. In addition, my opinion is based on the knowledge I gained through over 11 years of enforcement experience at the TCEQ, and through the additional eight years of similar experience I have gained at Fulbright & Jaworski LLP.

Section 2.2 The purpose of environmental enforcement is to address non-compliance; ensure appropriate corrective action is taken such that the effect of the non-compliance is abated; and deter future violations by the entity under enforcement and others. Enforcement is not an end, goal or objective unto itself. Rather it is a means designed to obtain and maintain compliance with environmental requirements.

### Section 2.3 *TCEQ Authority as Primary Environmental Authority in the State*

The Texas Legislature has designated TCEQ as "the agency of the state given primary responsibility for implementing the constitution and laws of this state relating to the conservation of natural resources and the protection of the environment." Tex. Water Code § 5.012. TCEQ's Commissioners are directed to "establish and approve all general policy of the commission." Tex. Water Code § 5.105. On approval of the commission, TCEQ's Executive Director may enforce the terms of any permit, order, standard or rule. Tex. Water Code § 5.230. Under these statutes, TCEQ has primary authority to enforce the laws of the state; the Commissioners establish the policies by which such enforcement is conducted, and the Executive Director and his staff conduct enforcement activities consistent with these policies.

#### **Section 2.4 *Action Not Brought in Same Manner as TCEQ***

Based on my review of the documents and my experience with respect to the enforcement of state and federal environmental laws and regulations, it is my opinion that the Harris County's pending suit against International Paper, WMI, WMOT, and MIMC is not one that is instituted in the same manner as the TCEQ. The pending suit is inconsistent with how TCEQ has operated its enforcement program and developed and implemented its enforcement policies, as discussed in greater detail below. Through its filing of this action, Harris County has improperly attempted to usurp the TCEQ's role as the primary authority, formulator, and implementer of environmental enforcement policy in the state.

#### **Section 2.4.1 *TCEQ Enforcement Objectives - Timely, Consistent, Transparent, and Equitable***

As TCEQ recognized in its Enforcement Process Review, effective enforcement must be timely, consistent, transparent, and equitable. As a result of its Enforcement Process Review, the TCEQ reaffirmed these elements as being critical to the success of its enforcement process, and it committed to taking enforcement actions in a manner that would meet these objectives.

#### **Section 2.4.2 *Action is Not Timely***

For an enforcement action to be timely, it must be taken in close proximity to the occurrence of the violation. Based on my review of the pleadings in this matter, Harris County's enforcement action is not timely. The alleged violation that is at the heart of Harris County's pleading occurred in 1965, and was addressed by Harris County at that time. No penalties were sought by Harris County. On ceasing the use of the impoundments in 1966, there were no further requirements applicable to maintaining or monitoring the impoundments. If Harris County had issues with the impoundments at the time, it failed to raise them. Enforcement 40+ years later is not timely.

In my experience, TCEQ has not and would not bring an enforcement action such as that brought by Harris County, in which the first notice of a penalty action was filed on December 22, 2011, seeking penalties for actions alleged to have occurred from September 1965 through April 2008. Evidence of this fact is that TCEQ did not pursue enforcement against the parties in this action either before or after the Superfund listing of the site in March 2008, and only became a party to this action as a result of being a necessary and indispensable party to Harris County's action, by statute.

#### **Section 2.4.3 *Action Jeopardizes TCEQ Enforcement Authority***

It should be noted that the Texas Legislature has not enacted a statute of limitations governing the time in which a civil or administrative environment enforcement matter may be brought by the TCEQ. The United States Environmental Protection Agency ("EPA") is subject to such a restriction with respect to its administrative and civil actions, pursuant to 28 U.S.C. § 2462. *See 3M Co. v. Browner*, 17 F.3d 1453 (D.C. Cir. 1994). The *Browner* Court recognized two bases for the § 2462 statute of limitations to be applied in administrative as well as civil enforcement

matters: (1) the concern that after the passage of time “evidence has been lost, memories have faded, and witnesses have disappeared”; and (2) “there comes a time when the potential defendant ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations.” *Id.* at 1457.

While I was Director of the Litigation Division, at least one environmental practitioner questioned me as to why it would not be appropriate for the Texas Legislature to enact a limitations period applicable to TCEQ’s administrative and civil enforcement actions. In response, I was able to point to TCEQ’s enforcement history and show that the agency had not abused its enforcement authority by bringing actions after the time in which evidence would have been lost, memories would have faded, and witnesses would have disappeared. A limitations period simply was not necessary.

Harris County’s suit puts that analysis in question. Its action seeks penalties back to 1967. Paperwork documenting county and state interactions with the Site and its owners has been destroyed, by fire, by compliance with records retention policies, and by time. Memories have faded over 40+ years. Witnesses have disappeared and died. Harris County had an opportunity to address its issues and did, in fact, address any compliance issues in 1965-1966. Based on Harris County’s action in this regard, the parties that are subject to the pending enforcement action, including a successor entity to Champion Paper, MIMC, and two parent entities to MIMC, have a reasonable expectation that MIMC was in compliance with respect to the impoundments and that Harris County did not intend to seek penalties to address these long-resolved issues. The bases for having a statute of limitations are all present in this pending action, which serves to jeopardize TCEQ’s enforcement authority by providing a justification for a limitations period, where one has previously not existed.

#### **Section 2.4.4 *Action is Not Consistent with TCEQ Policies and Processes***

This enforcement action is not consistent with how TCEQ has addressed other similar sites. Consistent enforcement means that the entity bringing the enforcement action has a history of taking similar actions in similar circumstances toward all entities. TCEQ has various programs through which contaminated sites are remediated. These include the Superfund, Voluntary Cleanup, Corrective Action, Dry Cleaner, and Petroleum Storage Tank Cleanup and Reimbursement programs. Based on my experience with the agency, TCEQ has historically not brought enforcement actions seeking penalties against entities that are working cooperatively within these agency programs to address contamination. In these cases, TCEQ’s objective is to ensure the clean-up of the site rather than the collection of penalties. This is true whether the monitoring of the clean-up is done at the state or federal level. This approach makes sense because the programs are focused on facilitating the clean-up of contaminated sites while minimizing the use of public funds to do so. If TCEQ were to bring enforcement actions against parties participating in these programs, it is likely that participation in these programs would decline, the use of public funds to perform clean-ups would increase, and fewer sites would be addressed.

On March 19, 2008, EPA placed the site that is the subject of Harris County’s pending action on the National Priorities List. On April 2, 2010, EPA issued an action memorandum for a time

critical removal action at the site to stabilize the site and abate any releases from the site until the site can be fully characterized and a remedy is selected. On May 11, 2010, International Paper and MIMC entered into an Administrative Settlement Agreement and Order on Consent for Removal Action with EPA under which International Paper and MIMC agreed to perform certain work necessary to stabilize the site and abate any releases from the site. These parties took such action and completed the time-critical removal action in 2011. Harris County recognized the beneficial work that the parties had done to address the contamination. Under such circumstances, as discussed above, TCEQ would not bring an enforcement action against International Paper or MIMC, and would certainly not bring an action against WMI or WMOT, either as parents of MIMC, or as independent entities..

A further aspect of consistency relates to the parties that TCEQ includes in an enforcement action. Under Section 7.351 of the Water Code, a civil action may be brought against the person who committed, is committing, or is threatening to commit the violation. In this action, Harris County seeks penalties against parents and subsidiaries for the same action. Based on my experience with the TCEQ, in the event that the agency brought an enforcement action, it would name as a Defendant or Respondent only the entity or entities that were alleged to have committed the alleged violation. On limited occasions, the agency has pursued a parent company where the subsidiary was no longer cooperating or capable of complying with an enforcement order. I am aware of no circumstance under which the agency has named both a cooperative and capable subsidiary and its parent as being responsible for the same alleged violation. For these reasons, Harris County's action has not been brought in the same manner as the Commission.

As stated, above, under Section 7.351 of the Water Code, a civil action may be brought against the person who committed, is committing, or is threatening to commit the violation. In this action, Harris County seeks penalties against generators of waste disposed of at the site in addition to the operator of the site, and its parents. The alleged violation is not for illegal disposal of waste, but for alleged releases from the site following legal disposal. Under such circumstances, TCEQ would timely pursue the operator of the site, but only if the operator was not responsive in addressing the release following notice. It would not bring an enforcement action against the generators of the waste that was legally disposed of at the site. Harris County's action has not been brought in the same manner as the Commission.

A fourth inconsistency is the lack of notice to the parties that are the subject of this action that Harris County intended to pursue enforcement against them. Except in rare instances where TCEQ pursues immediate injunctive relief to require the implementation of corrective action to address imminent and substantial endangerment, TCEQ's practice is to issue a Notice of Violation or a Notice of Enforcement prior to initiating enforcement. Although notice of a referral to the Attorney General's Office is not provided to a respondent, even in the context of a case referred to the Attorney General, it is the rare case in which a respondent has received no indication that TCEQ intends to pursue enforcement against it. Based on my review, Harris County provided the parties that are subject to this action no notice of its intent to pursue penalties for actions occurring 5-40+ years ago. In fact, just ten months prior to filing the pending action, Harris County's County Attorney praised the efforts of International Paper and MIMC in testimony before Congress, touting the "collaborative and effective partnership" with



the County, the EPA, International Paper and MIMC. He also praised the companies for having “gone beyond what is required” by funding research to identify affected populations and developing a community relations plan. In neither this presentation nor, apparently, in any other discussions with International Paper or MIMC, did the County Attorney or anyone else from Harris County indicate that Harris County intended to bring an enforcement action. Further, as Harris County acknowledges, it seeks no corrective action in this matter. It is only seeking penalties. I am aware of no case in which TCEQ has or would pursue an enforcement case, seeking only penalties, without providing notice to the subject of the enforcement case. For these reasons, Harris County’s action has not been brought in the same manner as the Commission.

Finally, in this regard, the penalties sought by Harris County are not consistent with those that would be sought by TCEQ. Harris County is seeking penalties of more than \$5 billion. By my calculations, in all of TCEQ’s administrative and civil enforcement matters resolved from 2000-2012, a total of \$713.1 million in penalties were required to be paid, including payments for Supplemental Environmental Projects. So, in this one action, Harris County seeks more than seven times the total enforcement amounts obtained by TCEQ over a 13-year period. On August 15, 2013, the Attorney General’s Office announced issuance of a \$7.5 million fine against a company for failing to comply with state environmental laws. Texas Attorney General Greg Abbott noted that the fine was one of the largest Clean Air Act penalties in state history. Harris County’s action seeks penalties that are more than 666 times greater than this significant Attorney General action taken on behalf of TCEQ. Harris County’s action has not been brought in the same manner as the Commission.

#### **Section 2.4.5 *Action Conflicts with TCEQ’s Maintenance of Transparent Enforcement Policies***

TCEQ has placed an emphasis on developing a transparent enforcement program. A transparent enforcement program is one in which enforcement policies are written and followed, such that all affected parties are clear as to what enforcement actions may be taken, under what circumstances, and why. Transparency helps regulated entities, and others, understand the enforcing agency’s expectations, such that regulated entities and the general public are aware of the enforcement processes and the consequences of non-compliance. In 2011, the Texas Legislature additionally emphasized the importance of transparency to TCEQ’s enforcement program by requiring that its enforcement policies be regularly assessed, updated and publicly adopted. *See* Tex. Water Code § 7.006. To implement this requirement, TCEQ revised its rule found at 30 TAC § 70.3, which now states:

The executive director may use specific enforcement policies that are neither rules nor precedents, but rather announce the manner in which the agency expects to exercise its discretion in future proceedings. These specific enforcement policies do not establish rules which the public is required to obey or with which it is to avoid conflict. These specific enforcement policies do not convey any rights or impose any obligations on members of the public. These specific enforcement policies are available to the public under the terms of the Public Information Act, Texas Government Code, Chapter 552 and the specific enforcement policies are posted on the commission's Internet Web site.

I note that these policies “announce the manner in which the agency expects to exercise its discretion in future proceedings.” This phrase closely tracks the provision in Section 7.351 of the Water Code, which allows local governments to bring actions “in the same manner as the commission ....” TCEQ has not made public any guidance, policy or procedure available to the public that would indicate its intent to alter its policy of not bringing enforcement actions seeking penalties against entities that are working cooperatively within the agency’s remediation programs to address contamination. Harris County’s pending action is contrary to the manner in which TCEQ handles similar circumstances.

#### **Section 2.4.6 Action is Not Equitable**

Finally, an enforcement program must be equitable, i.e., one that treats all parties fairly. TCEQ does so through its enforcement policies that are publicly available. As noted above, Harris County’s pending action is not one that TCEQ has or would bring on its own accord. The action is not timely. The action is not consistent with TCEQ’s enforcement policies and processes. TCEQ has historically not brought enforcement actions seeking penalties against entities that are working cooperatively within the agency’s remediation programs. I am aware of no circumstance under which the agency has named both a cooperative and capable subsidiary and its parent as being responsible for the same alleged violation. I am aware of no case in which TCEQ has pursued enforcement against waste generators for waste that was legally disposed of at a waste disposal site. I am aware of no case in which TCEQ has or would pursue an enforcement case, seeking only penalties, without providing notice to the subject of the enforcement case. The penalty sought by Harris County is seven times the cumulative total amount of penalties and SEPs assessed by the TCEQ in civil and administrative enforcement actions from 2000-2012. These facts demonstrate that Harris County is treating the Defendants differently and inequitably, as compared to other, similarly situated entities. In addition, the Legislature has given a specific mandate that TCEQ’s enforcement policies must be adopted by TCEQ’s commissioners and made available to the public so that regulated entities and the general public will be aware of the State’s expectations with respect to environmental compliance and enforcement. Given the State’s and TCEQ’s stated interest in ensuring that its enforcement process is predictable and fair, Harris County’s action has not been brought in the same manner as the commission.

#### **Section 3. The materials reviewed.**

1. Harris County’s Original Petition, First Set of Requests for Production, and First Set of Requests for Admission, December 22, 2011
2. Defendants’ Counterclaim and Application for Temporary and Permanent Injunction, February 24, 2012
3. International Paper’s Plea to the Jurisdiction, Special Exceptions, Verified Original Answer and Affirmative Defenses, February 24, 2012
4. MIMC’s Plea to the Jurisdiction, Special Exceptions and Motion to Dismiss, and Original Answer, February 24, 2012

5. Waste Management's Plea to the Jurisdiction, Special Exceptions and Motion to Dismiss, and Original Answer, February 24, 2012
6. International Paper Counterclaim and Application for Temporary and Permanent Injunction, February 29, 2012
7. Defendants' Motion for Emergency Temporary Injunction Hearing or, Alternatively, Motion to Stay the Proceedings, March 8, 2012
8. State's Response to Defendants' Motion for Emergency Temporary Injunction Hearing or, Alternatively, Motion to Stay the Proceedings, March 9, 2012
9. Harris County's Plea to the Jurisdiction of Defendants' Counterclaims and Response to Defendants' Application for Temporary Injunction, March 19, 2012
10. Waste Management's Opposition to Harris County's Plea to the Jurisdiction and Reply in Further Support of Their Application for Temporary and Permanent Injunction, March 21, 2012
11. Harris County's Response to Arguments Made by Defendants at April 23, 2012 Hearing, May 1, 2012
12. Defendants' Response to Harris County's Post-Hearing Brief, May 2, 2012
13. Harris County's Reply Supporting its Response to Arguments Made by Defendants at April 23, 2012 Hearing, May 3, 2012
14. Court Letter to J. C. Thomas re Order Signed Denying Temporary Injunction and Order Signed Denying Plea to the Jurisdiction, May 15, 2012
15. Harris County's First Amended Petition, August 15, 2012
16. Harris County's Second Amended Petition, October 11, 2012
17. International Paper's Amended Plea to the Jurisdiction, Motion to Dismiss, Special exceptions, Motion to Strike, Verified Answer, Affirmative Defenses to Harris County's Second Amended Petition, and First Amended Counterclaim, February 26, 2013
18. Larry Soward Report and CV, June 24, 2013
19. Deposition Transcript of Larry Soward as Corporate Representative of Harris County, Texas, July 17, 2013
20. EPA's Unilateral Administrative Order, November 20, 2009
21. EPA's Administrative Settlement Agreement and Order on Consent for Removal Action, May 11, 2010

22. Testimony of Harris County Attorney, Vince Ryan, before the U.S. House of Representatives' Committee on Energy and Commerce's Subcommittee on Environment and Economy, February 15, 2011
23. Texas Water Code, chapters 5 and 7
24. Title 30, Texas Administrative Code, chapters 60, 70 and 80
25. TCEQ's Enforcement Initiation Criteria, Revision 14, December 1, 2012
26. TNRCC's Sunset Self-Evaluation Report, August and October 1999
27. TCEQ's Sunset Self-Evaluation Report, October 2009
28. TCEQ's Annual Enforcement Reports for 2005, 2008, 2009, 2010, and 2012
29. Texas Attorney General's Press Release, "Gulf Chemical's Freeport Facility to Pay \$7.5 Million for Violating Texas Environmental Laws," August 15, 2013
30. State Auditor's Office, "The Commission on Enforcement Quality's Enforcement and Permitting Functions for Selected Programs," December 2003
31. TCEQ's Enforcement Process Review Final Report, January 2005

Section 4. *Biography.*

A copy of my firm biography is attached.

Respectfully submitted,



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### Related services

- Environmental
- Dispute resolution and litigation
- Chemicals
- Technology and innovation: Electronics and other technology
- Biotechnology

### Key industry sectors

- Energy
- Technology and innovation

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Counsel Paul Sarahan focuses on advising clients on environmental and workplace safety issues related to business transactions, enforcement, auditing, litigation, permitting, tax incentives and nanotechnology. He advises clients on property tax issues that involve the Texas pollution control exemption and other environmental issues. In addition, Paul advises clients on legislative activities.

Prior to joining the Austin office in 2005, Paul was the Director of the Litigation Division of the Texas Commission on Environmental Quality ("TCEQ") for seven years with four years of prior experience as a Senior Attorney and Staff Attorney. While at the TCEQ, Paul was rated one of the top in-house counsel by the Texas Lawyer. While at TCEQ, Paul litigated complex enforcement matters and handled

compliance history, penalty policy, and emission event issues. He advised TCEQ's Environmental Audit, Superfund, and PST programs, and reviewed criminal cases brought by the state's environmental crimes task force.

- **Education**

1993 – LL.M., Environmental, Energy and Natural Resources Law, The University of Houston Law School

1990 – J.D. with honors, The University of Texas School of Law

1987 – B.B.A., Finance, The University of Texas at Austin

He is admitted to practice in the United States District Courts for the Southern District of Texas, the Fifth Circuit Court of Appeals and the Texas Supreme Court.

- **Representative experience**

Paul's recent significant projects include:

- Advised various pipeline operations on TCEQ enforcement matters, including investigations related to operations in the Barnett Shale; air permitting matters; emissions inventory issues; greenhouse gas reporting requirements; and Department of Transportation registration requirements
- Represented clients in administrative enforcement actions brought by the Texas Commission on Environmental Quality and the Environmental Protection Agency
- Advised midstream oil and gas operations regarding various air issues, including Title V compliance, emission event reporting requirements, authorization under a standard permit, and greenhouse gas reporting requirements
- Assisted clients in developing and implementing environmental audit programs
- Advised clients on Occupational Safety and Health Administration (OSHA) requirements
- Represented a power plant in obtaining a reversal of a negative use determination on an application for an environmental tax exemption
- Represented clients in Superfund matters

- **Professional activities**

- The College of the State Bar of Texas
- State Bar of Texas
  - Environmental Law Section
  - Administrative Law Section
- Air & Waste Management Association, Central Texas Chapter, Vice-

## Chair

- Professional honors
  - "Top Ten Experts in Environmental, Health, and Safety Issues Related to Engineered Nanomaterials," *Nanotechnology Law & Business*, Vol. 6, No. 1, Spring 2009
  - "The In-House Crowd," *Texas Lawyer*, November 2005
- Publications
  - Co Author, "Texas Power Plants Obtain TCEQ Ruling Supporting Pollution Control Property Tax Exemption for HRSGs", *Fulbright Alert*, December 7, 2012
  - Co Author, "Texas Power Plants Obtain TCEQ Ruling Supporting Pollution Control Property Tax Exemption for HRSGs", *Fulbright Alert*, December 7, 2012
  - "TCEQ Adopts Compliance History Revisions", *Fulbright Briefing*, June 29, 2012
  - "TCEQ Adopts Compliance History Revisions", *Fulbright Briefing*, June 29, 2012
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- Civic involvement
  - Healthcare for the Homeless – Houston
    - Associate Board
  - The University of Texas, Chancellor's Council
- Licenses
  - Texas State Bar License
- Interests

College football, baseball, and traveling with his family